

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY**

ELECTRONIC CASE FILING (ECF)

ADMINISTRATIVE PROCEDURES MANUAL (APM)



***Administrative Procedures for Filing, Signing, Maintaining and
Verifying, and Serving Pleadings and Papers in the
ECF System***

Note: This manual is subject to change without advance notice. Refer to the Court's website (www.kyeb.uscourts.gov) for the current version of this manual.

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ADMINISTRATIVE PROCEDURES

I. REGISTRATION FOR THE ELECTRONIC CASE FILING SYSTEM

A. Assignment

ASSIGNMENT: All cases opened on August 1, 2002, and after are assigned to the Electronic Case Filing system (ECF System). Cases filed prior to August 1, 2002, will continue to be maintained as paper files and will not be docketed by public users in the ECF System. In order to differentiate between ECF and paper cases during the 2002 year, the last four digits of the case number for ECF cases will be higher than 4000. For example, an Ashland division case number will be 02-14001, 02-14002, etc. For adversary proceeding, the last three digits of the number for ECF adversaries will be higher than 400. For example, a Covington Division adversary proceeding will be numbered 02-2401, 02-2402, etc.

B. Registration and Passwords

- (1) **ELIGIBILITY AND REGISTRATION:** Attorneys admitted to the bar of this court (including those admitted pro hac vice), U.S. Trustees and their assistants, private trustees, and others as the court deems appropriate, will register as Filing Users of the court's Electronic Case Filing System. Registration is in the form prescribed by and available from the clerk. The registration forms are contained in the Appendix of this Electronic Case Filing Administrative Procedures Manual (APM). Completed registration forms shall be mailed to United States Bankruptcy Court, Attn: ECF Registration, P.O. Box 1111, Lexington, KY 40588-1111. After completion of training with an employee of the clerk's office, the registrant will receive a login and password for the online training system. No later than 30 days following the training, the registrant shall complete their online training. After successful completion of the online training, the registrant will receive an internet e-mail message. This is to insure that the attorney's internet e-mail address has been entered correctly in the ECF System. The password information for the ECF System will then be mailed to the attorney by regular, first class mail, unless the attorney has made arrangements to pick it up at the clerk's office.
- (2) **NON-REPRESENTED PARTIES:** If the court permits, a party to a pending action who is not represented by an attorney may register as a Filing User in the ECF System solely for purposes of that action. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User effective upon the attorney's appearance in the case.

- (3) **ELECTRONIC NOTICE AND SERVICE; WAIVERS:** As to all documents properly filed and served electronically, registration as a Filing User constitutes (a) a waiver of the right to receive notice or service by first class mail or personal delivery; and (b) consent to electronic service pursuant to applicable Local Rule or Standing Order except with regard to service of a summons and complaint under Rule 7004 of the Federal Rules of Bankruptcy Procedure and any other applicable rule or statute pursuant to which service by mail is not permitted. Waiver and consent pursuant to (a) and (b) of this paragraph applies to notice of the entry of an order or judgment under Rule 9022 of the Federal Rules of Bankruptcy Procedure.
- (4) **PASSWORDS:** Once registration is completed, the Filing User will receive notification of the Filing User log-in and password. Filing Users agree to protect the security of their log-in information and password and to immediately notify the clerk if they learn that their log-in information or password has been compromised. Users may be subject to sanctions for failure to comply with this provision.
- (5) **PACER:** All users of the ECF System must have a PACER account to access reports and documents. Each user accessing the ECF System from a location other than a public terminal at the Clerk's office will be charged a fee of \$.07 per page for each report or document retrieved with a 30-page, or \$2.10 cap on the charge per document, whether or not the user prints the viewed pages. Effective April 1, 2002, a cap of \$2.10 (the equivalent of 30 pages at \$.07 per page) was placed on the fee that will be charged for electronic access to any single document. However, attachments will be treated as separate documents and charged the fee of \$.07 per page up to the cap of 30 pages.) Reports and documents may be viewed from the public terminals located in the Clerk's office without charge, but there will be a fee of \$.10 per page for any copies printed from the public terminals. Registered users of the ECF System who receive e-mail notification of docket activity for cases in which they appear, receive one free look at each document filed in those cases when accessing the document through the hyperlink in the e-mails.

II. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

A. Filing

FILING: All petitions, motions, memoranda of law, and other pleadings or documents required to be filed with the court in connection with an ECF case, as designated by Section I.A. above, must be electronically filed unless specifically authorized by separate order of the court.

B. Consequences of Electronic Filing; Deadlines

- (1) FILING: Electronic transmission of a document to the Electronic Case Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the clerk, constitutes filing of the document for all purposes of the Federal Rules of Bankruptcy Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Rule 5003 of the Federal Rules of Bankruptcy Procedure.
- (2) OFFICIAL RECORD: When a document has been filed electronically, the official record is the electronic recording of the document as stored by the clerk, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing.
- (3) DEADLINES UNCHANGED BY ELECTRONIC FILING: Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before 12:00 midnight, Eastern Time, in order to be considered timely filed that day.

C. Entry of Court Orders

- (1) FILING OF COURT ORDERS; EFFECT OF ELECTRONIC FILING ON COURT ORDERS: All orders, decrees, judgments and proceedings of the court in connection with an ECF case will be filed in accordance with these procedures, which will constitute entry on the docket kept by the clerk under Rules 5003 and 9021 of the Federal Rules of Bankruptcy Procedure. All orders or other documents generated by the court and filed electronically, without the signature of a judge, shall have the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and it had been entered on the docket in a conventional manner.
- (2) SUBMISSION OF DOCUMENTS FOR JUDGE'S SIGNATURE: Any document submitted for a judge's signature in a case assigned to the ECF System must be

submitted electronically, to the clerk's office, in the format specified by the APM.

- (3) **PROPOSED ORDERS TENDERED BY COUNSEL:** Whenever possible proposed orders are to be submitted as attachments to the corresponding motion. When attaching the order select "Proposed Order" as the type of attachment. When an agreed order or a proposed order is submitted after the motion was filed it needs to be docketed using the "Proposed Order Submitted" event. This event is currently in the Miscellaneous category. Whenever appropriate, the proposed order needs to be linked to the relevant motion or other document. A proposed order shall only reference one motion or document.

All proposed orders in bankruptcy cases shall include the following language:

"Pursuant to Local Rule 9022-1(c), {insert name of attorney tendering order here} shall cause a copy of this order to be served on each of the parties designated to receive this order pursuant to Local Rule 9022-1(a) and shall file with the court a certificate of service of the order upon such parties within ten (10) days hereof."

The required text referenced above shall be placed so that the text begins at the left margin of the order preceding the names of all persons to be served with a copy of the order.

D. Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are germane. Exhibits should be included with the main document if possible. In order to control the size of PDF files, the main document, including exhibits, shall be no longer than 50 pages. Any pages over the 50-page maximum must be filed as an attachment to the document. Again, each attachment shall be no longer than 50 pages although one document may have multiple attachments. For example, for a 10-page motion with 130 pages of exhibits, the main document would consist of the 10-page motion and the first 40 pages of exhibits. The remaining 90 pages of exhibits would be filed as two attachments to the main document, 50 pages with the first attachment, and the final 40 pages with the second attachment.

If exhibits cannot be scanned, the attorney shall make a note in the docket text that there are unscannable exhibits. Upon request by any party in interest or the court, the complete document containing any excerpt shall be made available to both the party making the request and the court, unless otherwise ordered by the court.

E. Sealed Documents

Documents ordered to be placed under seal must be filed conventionally, and not electronically, unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. A court order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of any order authorizing the filing of documents under seal must be attached to the documents to be sealed and delivered to chambers. The sealed documents shall be submitted both in paper form and on diskette in PDF format. The diskette will be placed under seal with the documents until such time as the documents are unsealed. When the documents are unsealed the diskette will be used to add the documents to the electronic case file. The electronic case file will then be the official record of the filed, unsealed documents and the paper documents will be returned to the filer.

F. Original Signatures and Requirements

Electronically filed documents that require original signatures from any person other than the Filing User must be maintained by the Filing User in paper form, bearing the original signatures, for 2 years after the closing of the case or proceeding in which the documents were filed or after all time periods for appeals have expired. Upon the court's request, the Filing User must provide the original signed documents for review.

G. Signatures and Certification

- (1) **ELECTRONIC FILING CONSTITUTES SIGNATURES AND CERTIFICATION:** The use of the log-in and password of the Filing User to electronically file any petition, pleading, motion, claim or other document shall constitute the signature of that Filing User on the electronically filed document for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before this court. Use of the log-in and password shall also constitute certification by the Filing User, and by any agent authorized by the Filing User to use the log-in and password, that: (1) all persons indicated to have signed the document have actually executed the original prior to electronic filing; and (2) the Filing User has authorized the electronic filing of the executed

document.

- (2) **USE OF LOG-IN/PASSWORD:** No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an agent of the Filing User authorized to use such log-in and password.
- (3) **FORM OF ELECTRONIC SIGNATURE:** Electronically filed documents requiring a signature shall either: (1) show an image of such signature as it appears on the original document or appended as an image file, in which case such document shall indicate that it has been filed electronically, or (2) bear the name of the signatory preceded by an "s/" typed in the space where the signature would otherwise appear, as follows: s/ Jane D. Doe.
- (4) **DOCUMENTS REQUIRING MULTIPLE SIGNATURES:** Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; or (3) in any other manner approved by the court.

H. Service of Documents by Electronic or Conventional Means; Calculation of Response Time

- (1) **NOTICE OF ELECTRONIC FILING TO FILING USERS:** A Filing User who electronically files a pleading or other document in a case assigned to the ECF System may transmit or cause to be transmitted a "Notice of Electronic Filing" to other filing Users entitled to notice or service of the document under the Federal Rules of Bankruptcy Procedure or the Local Rules.
- (2) **TRANSMISSION OF NOTICE OF ELECTRONIC FILING:** The Notice of Electronic Filing may be transmitted by e-mail, hand, facsimile, or by the U.S. Mail, first-class postage prepaid. Transmission of the Notice of Electronic Filing to Filing Users constitutes service or notice of the filed document on Filing Users.
- (3) **CONVENTIONAL SERVICE OF DOCUMENTS AND NOTICE TO NON-CONSENTING PARTIES:** Parties who have not consented in writing to electronic service of documents or notice must be served with a paper copy of any electronically filed pleading or other document.
- (4) **CALCULATION OF RESPONSE TIME:** Rule 9006(f) of the Federal Rules of Bankruptcy Procedure shall apply to the calculation of deadlines for responses to electronically filed pleadings and other documents.

I. Notice and Service of Court Orders

- (1) NOTICE AND SERVICE TO FILING USERS: Immediately upon the entry of an order, judgment, decree or other document generated by the court in an action assigned to the ECF System, the clerk will electronically transmit a Notice of Electronic Filing to all Filing Users in the case. Electronic Transmission of the Notice of Electronic Filing constitutes the notice required by Rule 9022 of the Federal Rules of Bankruptcy Procedure, and constitutes service of the document to Filing Users.
- (2) NOTICE AND SERVICE TO NON-CONSENTING PARTIES: The attorney or any other party the court may direct must give conventional notice and service of documents in accordance with the Federal Rules of Bankruptcy Procedure to any person who has not consented in writing to electronic service.

J. Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

K. Notice to the U.S. Trustee

CHAPTER 7 AND 13 CASES: The Office of the United States Trustee is not entering an appearance electronically in all Chapter 7 and Chapter 13 cases. Filers must separately serve e-mail notice to the United States Trustee of filings relating to matters listed below in Bankruptcy Rule 9034:

- (a) a proposed use, sale, or lease of property of the estate other than in the ordinary course of business;
- (b) the approval of a compromise or settlement of a controversy;
- (c) proposed case terminations (report of no distribution; final report/account; dismissal; conversions);
- (d) the employment of professional persons;
- (e) an application for compensation or reimbursement of expenses;
- (f) objection to waiver of or revocation of the debtor's discharge.

The e-mail address for the Office of the United States Trustee for the Eastern District of Kentucky is: ustregion08.lx.ecf@usdoj.gov

III. **LIMITATIONS ON PUBLIC ACCESS**

Any person or organization, other than one registered as a Filing User under Section I.B(1) of these procedures, may access the ECF System at the court's Internet site at www.kyeb.uscourts.gov by obtaining a PACER log-in and password. Those who have PACER access but who are not Filing Users may retrieve docket sheets and documents, but they may not file documents. To register for PACER, contact the PACER Service Center at www.pacer.psc.uscourts.gov or 1-800-676-6856.

IV. **OTHER**

A. **Notice by Electronic Transmission**

- (1) Whenever the clerk, or some other person as directed by the court, is required to send notice by mail and the entity or person entitled to receive the notice requests in writing that, instead of notice by mail, all or part of the information required to be contained in the notice be sent by a specified type of electronic transmission, the court may direct the clerk or other person to send the information by such electronic transmission.
- (2) Notice by electronic transmission is complete, and the sender shall have fully complied with the requirement to send notice, when the sender obtains electronic confirmation that the transmission has been received, except where the recipient of the notice has agreed in writing that confirmation is not required, in which case notice is complete upon transmission.

B. **Portable Document Format**

Documents filed in the ECF system must be in Portable Document Format (PDF), a standard document creation format created by Adobe systems, Incorporated ("Adobe"). PDF documents can be created using Adobe Acrobat, or word processing programs such as Microsoft Word and Corel WordPerfect, or with stand-alone software from other vendors. Each of these allow a user to "print" a document to a PDF file electronically so page layout and other formatting is preserved. The document can also be secured so it cannot be altered. Documents in PDF format can be read using the free Acrobat Reader from Adobe, or by some third-party tools. PDF documents should comply with Adobe guidelines for accessibility. The Portable Document Format standard also permits documents to be created by scanning a document to create an image file. However, when a scanned document is converted to a PDF file the resulting

image file is much larger than a PDF of equal length created by converting a text file. When the user is filing a document using the ECF system, it will take longer to transfer that image file from the user's computer to the court's servers, and to download and view that document. Image files also take up much more space on the court's servers and cannot be searched as text-based files can. Many documents, such as the Proof of Claim form, are available to be filled out online and saved directly as a PDF text file. Therefore, if possible, the user should avoid filing imaged documents. If imaged documents must be filed, their size should be minimized by scanning the document at 300 dpi and documents should be in black and white or, if shading is required, in grayscale. Color should be used only when absolutely necessary.

C. Combining Different Types of Requests in One Document

With paper filings, parties may occasionally file a document containing several different motions or requests for relief. The CM/ECF software has no method to decipher PDF documents to determine what they contain. It is necessary for the user to select the proper docketing events that best describe what is in the PDF document. As a general rule, the user should not combine in one document anything that could be filed separately. For example, never combine a motion with a response or answer to another document. However, the petition and accompanying documents are an exception to this rule. Petition preparation software is designed to include the Schedules, Statement of Financial Affairs, Fee Disclosure, and Statement of Intention in one document.

REVISIONS

Aug. 9, 2002

Added to Sec. IIC(3): "All proposed orders in bankruptcy cases shall include the following language: Pursuant to Local Rule 9022-1(c), {insert name of attorney tendering order here} shall cause a copy of this order to be served on each of the parties designated to receive this order pursuant to Local Rule 9022-1(a) and shall file with the court a certificate of service of the order upon such parties within ten (10) days hereof. The required text referenced above shall be placed so that the text begins at the left margin of the order preceding the names of all persons to be served with a copy of the order."

November 1, 2002

Corrected U.S. Trustee e-mail address in Section II.K.